IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 763 of 2005(N)

PETITIONERS:
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1. ST.MARY'S ORTHODOX CATHEDRAL,
PARK AVENUE, KOCHI-11, REPRESENTED BY
PRESENT TRUSTEE, THOMAS PAUL, AGED 70 YEARS,
S/O. T.THOMAS, TRUSTEE, ST.MARY'S ORTHODOX
CATHEDRAL, PARK AVENUE, KOCHI-11,ERNAKULAM VILLAGE
KANAYANNUR TALUK.

2. P.K.ISAC, S/O. P.K.KUTTY,
AGED 74 YEARS, ST.MARY'S ORTHODOX CATHEDRAL,
PARK AVENUE, KOCHI-11.

BY ADV. SRI.M.P.ABRAHAM

RESPONDENTS:

PAILY, S/O. THOMAS,
AGED 73 YEARS, AMBAZHAKKADAN, S.T.P. ROAD,
ELAMKULAM, PALATHURUTH DESOM, ELAMKULAM VILLAGE.

BY ADV. SRI.N.C.JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 763/2005 N

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER DT. 27/11/2004 OF THE 2ND ADDITIONAL MUNSIFF COURT, ERNAKULAM IN OS NO. 1922/2002.

RESPONDENT'S EXHIBITS

EXT.R1: COPY OF THE AFFIDAVIT AND APPLICATION IN SUPPORT THEREOF TO SET ASIDE THE COMMISSION APPLICATION IN OS NO. 1922/2002 OF MUNSIFF COURT, ERNAKULAM.

True copy

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.763 of 2005

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Dated: 10th July, 2007

JUDGMENT

Heard Mr.M.P.Abraham, Senior Advocate for the petitioners and Mr.N.C.Joseph, Advocate for the respondent.

2. Flaying Ext.P1 Mr.Abraham, invited my attention to the order dated 2.11.2004 in I.A.No.8102/02 under which the court below has closed the commission application. He placed before me copy of the order dated 5.11.2004 dismissing the earlier commission application filed by the respondent as infructuous. He has also produced before me copy of the order dated 2.11.2004 in I.A.No.9103/04 setting aside the report which had been submitted by the previous Commissioner in the case. Mr.Abraham would submit that it is overlooking the above three orders which had attained finality that the learned Munsiff passed Ext.P1 in a very casual way.

3. Mr.N.C.Joseph, learned counsel for the respondent would invite my attention to Ext.R1 counter affidavit which was filed by the petitioner to the commission application upon which Ext.P1 was passed and particularly to a separate application which had been filed by the petitioner along with a counter affidavit . The application is dated 30.10.2004 and the prayer in the application is that the

commission report dated 4.6.2004 and the survey plan be set aside and a fresh commission be issued for measuring the property of the plaintiff on the basis of the sale deeds. Mr.Joseph submitted that it was considering that application also that the impugned order was passed. I would have been inclined to observe that there is merit at least technically in the submissions of the learned Senior Counsel but for the obvious position that it is considering the application filed by the petitioner also, that the impugned order was issued by the learned Munsiff. I do not find any warrant for interfering with Ext.P1 in exercise of the supervisory jurisdiction of this court under Article 227 of the Constitution. The challenge against Ext.P1 will fail. The Writ Petition will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**